

Message Text

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DRAFTED BY EA:RHMILLER:L:MR. ALDRICH

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S/S -O:AWTTO

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TO USDEL SECRETARY IMMEDIATE

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EXDIS

E.O. 11652: GDS

TAGS: RP, MARR

SUBJECT: BRIEFING MEMORANDUM: PHILIPPINE AIDE MEMOIRE
ON THE US COMMITMENT

REF: SECTO 20059

TO THE SECRETARY FROM EA-MILLER AND L-ALDRICH THROUGH
HABIB

1. PURSUANT TO YOUR REQUEST, WE SUBMIT THE FOLLOWING
ANALYSIS OF THE PHILIPPINE AIDE MEMOIRE AND ITS RELATION-
SHIP TO THE BASE NEGOTIATIONS.

2. MARCOS' PRIMARY STATED MOTIVATION FOR SEEKING TO
RENEGOTIATE THE BASE AGREEMENT HAS BEEN TO MODERNIZE
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THE US-PHILIPPINE RELATIONSHIP AND TO GIVE CONCRETE
MANIFESTATION TO PHILIPPINE SOVEREIGNTY OVER THE BASES
AND OVER OUR OPERATIONS ON THE BASES. THIS HAS BEEN A
CONSISTENT PHILIPPINE THEME SINCE BEFORE THE PRESIDENT'S
AND YOUR VISIT TO MANILA LAST DECEMBER.

3. HOWEVER, SINCE THE NEGOTIATIONS RESUMED IN BAGUIO IN
JUNE, PHILIPPINE NEGOTIATORS HAVE INCREASINGLY EXPLICITLY
QUESTIONED THE VALUE OF US FACILITIES TO THE PHILIPPINES

ON THE GROUNDS THAT THE US COMMITMENT TO DEFEND THE

PHILIPPINES, AS EMBODIED IN THE MUTUAL DEFENSE TREATY WAS OF DOUBTFUL VALIDITY IN THE POST-VIETNAM ENVIRONMENT. THIS THEME LAY BEHIND THE QUESTIONS ABOUT OUR PERCEPTIONS OF OUR COMMITMENTS, AND OF THE POTENTIAL THREATS, IN THE AREA CONTAINED IN THE ROMUALDEZ LETTER OF JUNE 21, AND TO WHICH WE RESPONDED ON JULY 26.

JULY 29 THE PHILIPPINE MILITARY REPRESENTATIVE ON THE MUTUAL DEFENSE BOARD HANDED HIS US COUNTERPART A DOCUMENT DESIGNED TO SEEK A PRECISE DEFINITION OF U. OBLIGATIONS UNDER THE MUTUAL DEFENSE TREATY WITH SPECIFIC REFERENCE TO THE DISPUTED SPRATLY ISLAND AND REED BANK AREAS, IN THE LATTER OF WHICH THE PHILIPPINE; NOW HAVE AN OIL-DRILLING RIG. THE MARCOS' AIDE MEMOIRE HANDED TO THE DEPUTY SECRETARY IS THE MOST AUTHORITATIVE EXPRESSION OF THIS TREND IN PHILIPPINE THINKING. THE AIDE MEMOIRE CORRECTLY SUMMARIZES OUR OBLIGATIONS UNDER THE TREATY, BUT APPEARS TO DISTORT OUR POSITION ON THE TREATY'S APPLICATION TO THE SPRATLY'S AND REED BANK: NAMELY, THAT THESE ARE DISPUTED AREAS AND THAT WE CANNOT INTERPRET THE TREATY AS AUTOMATICALLY SUPPORTING PHILIPPINE CLAIMS IN DISPUTED AREAS.

4. THE EXTENT TO WHICH THE AIDE MEMOIRE REPRESENTS A REAL, DEEP-FELT CONCERN BY MARCOS OR A NEGOTIATING PLOY IS DIFFICULT TO SAY. IN CRUDE TERMS, ONE COULD SAY THAT THE LESS WE SATISFY MARCOS ON THE EXTENT AND AUTOMATICITY OF OUR COMMITMENT, THE MORE HE WILL DEMAND IN MONETARY COMPENSATION FOR THE BASES. BUT MARCOS UNDOUBTEDLY HAS OTHER CONCERNS WHICH COMPLICATE THE PICTURE -- FOR HIM AND FOR US. IN ADDITION TO ESTABLISHING RELATIONS WITH THE
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PRC AND USSR, HE IS ACTIVELY TRYING TO ENHANCE HIS CREDENTIALS WITH THE NON-ALIGNED WORLD. HE HAS RECENTLY ESTABLISHED RELATIONS WITH VIET-NAM AND IN DOING SO AGREED THAT THE TERRITORY OF NEITHER COUNTRY WILL BE USED FOR AGGRESSION OR DIRECT INTERVENTION AGAINST COUNTRIES IN THE AREA. MARCOS IS TRYING HARD TO GET ADMITTED TO THE NON-ALIGNED CONFERENCE IN COLOMBO AT LEAST AS AN OBSERVER.

5. ACCORDING TO SULLIVAN'S REPORTING, MARCOS ALSO DOUBTS THAT ANY ADMINISTRATION AGREEMENT ON THE BASES, INCLUDING MOST IMPORTANTLY A MULTI-YEAR COMMITMENT TO PROVIDE AID, WILL BE BACKED BY THE CONGRESS. IT IS NOT CLEAR WHETHER HE THINKS HE MIGHT GET A BETTER DEAL FROM A NEW ADMINISTRATION AND A NEW CONGRESS, OR WHETHER HE ESTIMATES THAT, FOR HUMAN RIGHTS REASONS ALONE, HIS ABILITY TO COUNT ON THE US COMMITMENT -- AND AID -- WILL ONLY GO DOWNHILL FROM HERE.

6. WE BELIEVE THAT MARCOS IS NOT RPT NOT PREPARED, FOR HIS OWN DOMESTIC POLITICAL REASONS, TO CLOSE OUT THE BASES OR TO ABROGATE THE MUTUAL DEFENSE TREATY AT THE PRESENT TIME. THAT WOULD REMOVE THE KEY COUNTERWEIGHT TO HIS NEW RELATIONS WITH THE PRC AND USSR, AND WITH VIET-NAM AND THE THIRD WORLD. HOWEVER, HE MAY THINK HE HAS NOTHING TO LOSE, GIVEN THE HISTORY OF THE GREEK, TURKISH AND SPANISH NEGOTIATIONS, IN PRESSING US VERY HARD UNDER PRESENT CIRCUMSTANCES BOTH ON THE COMMITMENT AND ON MONEY. IF WE DO NOT MEASURE UP ON EITHER -- OR BOTH -- COUNTS, WHAT HAPPENS NEXT WILL THEN BE OUR FAULT. FOR THESE REASONS, WE TEND TO GIVE CREDENCE TO SULLIVAN'S JUDGMENT THAT MARCOS MAY INTEND NOT TO CLOSE A DEAL UNTIL THE NEXT ADMINISTRATION AND CONGRESS ARE IN OFFICE AND HE CAN TAKE THEIR MEASURE.

7. WHILE WE OURSELVES WOULD PREFER TO COMPLETE THE NEGOTIATIONS AND ARRIVE AT A MUTUALLY SATISFACTORY AGREEMENT TO STABILIZE OUR RELATIONSHIP, WE HAVE LITTLE ROOM FOR MANEUVER ON THE COMMITMENT QUESTION. AND WE CANNOT
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BE OPTIMISTIC REGARDING OUR ABILITY IN FORESEEABLE FUTURE TO GET CONGRESSIONAL BACKING FOR A MULTI-YEAR COMMITMENT TO PROVIDE AID IN THE AMOUNTS MARCOS UNDOUBTEDLY DESIRES. (HE HAD NOT GIVEN US A FIGURE, BUT HIS EQUIPMENT LIST AMOUNTS TO \$3.6 BILLION OVER FIVE YEARS.)

8. REGARDING THE EXTENT OF US COMMITMENTS UNDER THE MDT, THE AIDE MEMOIRE STATES SEVERAL DIFFERENT COMPLAINTS ABOUT THE AMBIGUITY OF OUR VARIOUS STATEMENTS. FIRST, WITH RESPECT TO THE CONTINGENCY OF AN ATTACK ON THE PHILIPPINES ITSELF, IT COMPLAINS THAT WE HAVE INDICATED THAT OUR RESPONSE WOULD NOT BE AUTOMATIC ENGAGEMENT OF US FORCES IN ORDER TO REPEL THE ATTACK BUT RATHER THAT WE WOULD DECIDE, "IN ACCORDANCE WITH OUR CONSTITUTIONAL PROCESSES", WHAT RESPONSE WE CONSIDERED APPROPRIATE, WHICH MIGHT RANGE FROM MILITARY COMBAT ACTION TO MERE DIPLOMATIC SUPPORT. THE AIDE MEMOIRE IGNORES THE FACT THAT WHAT WE WOULD DO WOULD, BY THE TREATY, BE WHAT WAS NECESSARY TO MEET THE "COMMON DANGER" WHICH THE TREATY DEFINES AS RESULTING FROM THE ATTACK. WE CAN PERHAPS GIVE THE PHILIPPINES SOME SATISFACTION BY CLARIFYING THIS POINT.

9. THE AIDE MEMOIRE, SOMEWHAT SURPRISINGLY, DOES NOT EMPHASIZE THE "CONSTITUTIONAL PROCESSES" POINT WHICH, ON OTHER OCCASIONS, THE PHILIPPINES HAVE POINTED TO AS INDICATING THAT CONGRESS WOULD HAVE TO AUTHORIZE ACTION

UNLESS OUR BASES WERE ATTACKED OR DIRECTLY THREATENED.

IN FACT, OF COURSE, THIS PHRASE, WHICH IS INCLUDED IN ALL OUR MUTUAL DEFENSE TREATIES, WAS DESIGNED TO MAKE IT CLEAR THAT THE TREATY DID NOT AFFECT THE DIVISION OF POWER BETWEEN THE PRESIDENT AND THE CONGRESS UNDER OUR CONSTITUTION. I; WAS NOT DESIGNED TO ESTABLISH A REQUIREMENT FOR CONGRESSIONAL ACTION IN CASES WHERE THE PRESIDENT HAS THE POWER TO ACT. OUR DIFFICULTIES HERE WITH THE PHILIPPINES RESULT PARTLY FROM RECENT EVENTS IN SOUTHEAST ASIA, PARTLY FROM THEIR PSYCHOLOGICAL BENT TO BELIEVE THAT THEY ARE BEING GIVEN SECOND-RATE TREATMENT, AND PARTLY FROM OUR FAILURE IN RECENT YEARS TO REPEAT THE INFLATED RHETORIC OF THE EISENHOWER, KENNEDY, JOHNSON
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YEARS WITH RESPECT TO THE IMMEDIACY AND MASSIVENESS OF OUR MILITARY RESPONSE IN THE EVENT OF AN ATTACK ON THE PHILIPPINES. OUR BEST COURSE OF ACTION WITH RESPECT TO THESE CONCERNS WOULD SEEM TO BE TO EMPHASIZE THE SIGNIFICANCE OF THE PRESENCE OF US BASES IN THE PHILIPPINES FOR OUR ABILITY TO RESPOND QUIETLY AND EFFECTIVELY TO AN ATTACK ON THE PHILIPPINES AND TO REMIND THE PHILIPPINES OF THE LONG-TERM DETERRENT VALUE OF THE TREATY, EVEN IF NO SHORT-TERM THREAT IS PERCEIVED.

10. DESPITE THE EMPHASIS IN THE AIDE MEMOIRE ON THE ALLEGED AMBIGUITY OF US COMMITMENTS IN THE EVENT OF AN ATTACK ON THE PHILIPPINES ITSELF, WE BELIEVE THE MOST SPECIFIC PHILIPPINE CONCERN IS WITH RESPECT TO THE APPLICATION OF THE DEFENSE TREATY TO THE SPRATLY ISLANDS AND THE REED BANK. THIS, OF COURSE, IS THE ONE PLACE WHERE THE PHILIPPINES PERCEIVE A REAL THREAT IN THE SHORT TERM. ON THIS QUESTION WE HAVE LIMITED FLEXIBILITY IN TRYING TO ASSUAGE THEIR CONCERNS AS SHOWN BY THE FOLLOWING ANALYSES.

11. THERE ARE, UNDER THE TREATY, TWO WAYS IN WHICH ATTACKS AGAINST PHILIPPINE INTERESTS IN THESE ISLANDS COULD BE COVERED. FIRST, IF THE ISLANDS ARE PHILIPPINE SOVEREIGN TERRITORY, THEN ANY ARMED ATTACK AGAINST THEM TRIGGERS OUR OBLIGATIONS UNDER ARTICLE 4 OF THE TREATY. THERE IS NO QUESTION BUT THAT THEY WERE NOT PART OF THE PHILIPPINES AT THE TIME THE TREATY ENTERED INTO FORCE; THEREFORE, THE ONLY INTERPRETATION WE COULD ACCEPT AS A PRECEDENT WOULD BE THAT THE TREATY APPLIES TO THEM AS PHILIPPINE TERRITORY ONLY WHEN WE RECOGNIZE THAT THEY BELONG TO THE PHILIPPINES. WE BELIEVE THE GOP UNDERSTANDS THIS AND DOES NOT REALLY EXPECT US TO ENDORSE THEIR CLAIMS. THIS IS WHY THEY HAVE EMPHASIZED THE SECOND WAY IN WHICH AN ATTACK MAY TRIGGER OUR OBLIGATIONS UNDER ARTICLE 4 -- AN ATTACK UPON ARMED FORCES OF THE PHILIPPINES.

12. ARTICLE 5 OF THE TREATY STATES THAT "AN ARMED ATTACK

UPON EITHER OF THE PARTIES" INCLUDES NOT MERELY AN
ATTACK ON THE TERRITORY OF EITHER, BUT ALSO "ON ITS ARMED
FORCES, PUBLIC VESSELS OF AIRCRAFT IN THE PACIFIC".

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THIS, OF COURSE, WAS INTENDED TO COVER SUCH THINGS AS
ATTACKS AGAINST US FORCES IN JAPAN OR KOREA OR AGAINST
THE SEVENTH FLEET IN THE TAIWAN STRAIGHT, BUT THE LANGUAGE
WOULD CERTAINLY COVER ATTACKS AGAINST PHILIPPINE PUBLIC
SHIPS OR AIRCRAFT IN THE REED BANK. THE REASONS WHY
WE HAVE REFUSED TO SAY TO THE GOP THAT SUCH AN ATTACK WOULD
BRING INTO PLAY OUR OBLIGATIONS UNDER ARTICLE 4 OF THE
TREATY IS THAT WE DO NOT BELIEVE IT WAS INTENDED TO
COVER FORCES ENGAGED IN STAKING CLAIMS TO LEGITIMATELY
DISPUTED TERRITORY, THAT SUCH COVERAGE WOULD, IN EFFECT,
PERMIT THE TERRITORIAL COVERAGE OF THE TREATY TO BE
EXTENDED UNILATERALLY BY ONE PARTY THROUGH A BOOTSTRAP
TYPE OF ARGUMENT, AND THAT IT COULD PROPEL US INTO A
MILITARY CONFRONTATION WITH THE PRC OR VIETNAM IN A
SITUATION IN WHICH THEY WERE MERELY COUNTERING PHILIPPINE
ACTS AGAINST TERRITORIES TO WHICH THEY HAVE STRONG CLAIMS.
WE BELIEVE THESE REASONS ARE STILL VALID, BUT BUT WE
RECOGNIZE THAT THE DISTINCTION BETWEEN THIS CASE AND THE
CASE OF AN ATTACK ON US FORCES IN THE TAIWAN STRAIGHT-
RESTS LARGELY ON THE CLAIM-STAKING CHARACTER OF THE
PHILIPPINE ACTS AND THE CHANGES WROUGHT BY THE PASSAGE
OF YEARS. ON THE REED BANK THE RECIPROCAL NATURE OF
OUR DEFENSE TREATY HAS EVOLVED IN WAYS UNFORSEEN IN THE
1950S. LEGALLY THERE IS SOME FLEXIBILITY IN OUR POSITION
ON THIS QUESTION, BUT THE POLITICAL AND CONGRESSIONAL
RESTRAINTS REQUIRE FURTHER ANALYSIS.

13. IN DECIDING HOW TO RESPOND TO MARCOS, WE OBVIOUSLY
DO NOT SEEK A CONFRONTATION WITH HIM. WE SHOULD SEEK
TO REASSURE HIM, BUT AT THE SAME TIME MAKE CLEAR WE ARE
BOUND BY LAW AND BY OUR CONSTITUTIONAL PROCESSES. OUR
TENTATIVE CONCLUSION

SHOULD INCLUDE THE FOLLOWING ELEMENTS:

A. WE TAKE OUR COMMITMENT TO THE PHILIPPINES
SERIOUSLY AND INTEND TO HONOR IT AND THE VERY PRESENCE
OF OUR BASES THERE IS A CONCRETE MANIFESTATION OF THIS
COMMITMENT AND THIS INTENTION;

B. LIKE ALL OF OUR SECURITY TREATIES, WE CAN ACT
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ONLY IN ACCORDANCE WITH OUR CONSTITUTION, BUT THE
PRESIDENT'S POWERS UNDER IT AS THE COMMANDER-IN-CHIEF ARE

SUBSTANTIAL;

C. THE TREATY APPLIES TO ALL THE TERRITORY OF THE PHILIPPINES (AND NOT JUST TO US FORCES OR FACILITIES THERE), BUT WE CANNOT INTERPRET THE MDT AS AUTOMATICALLY APPLYING TO DISPUTED AREAS SUCH AS THE SPRATLYS AND THE REED BANK. HOWEVER, IF THOSE DISPUTES WERE NEGOTIATED OR ADJUDICATED, WE WOULD RESPECT THE RESULTS AS VALID, AND THOSE AREAS DETERMINED TO BE PART OF PHILIPPINE TERRITORY WOULD CLEARLY BE COVERED BY THE TREATY.

14. IN ADDITION TO THE ABOVE POINTS, WE WOULD NEED TO REPLY TO MARCOS' QUESTION CONCERNING COVERAGE UNDER THE TREATY OF PHILIPPINE ARMED FORCES IN THE SPRATLYS AND REED BANK AREAS. WE ARE WORKING ON DEVELOPING THE OPTIONS IN THIS REGARD FOR YOUR CONSIDERATION.

15. AS YOU CAN SEE, THERE ARE ASPECTS OF THE TREATY SUBJECT TO VARYING INTERPRETATIONS. THE MOST DIFFICULT ONE, FOR US, IS THE DEFINITION OF OUR COMMITMENT IF PHILIPPINE FORCES ARE ATTACKED IN THE AREA OF THE SPRATLYS AND THE REED BANK. IN ADDITION TO THE LEGAL COMPLEXITIES, WE MUST ALSO TAKE ACCOUNT OF THE REACTION OF OTHER CLAIMANTS, NOTABLY THE PRC, AS WELL AS LIKELY CONGRESSIONAL VIEWS OF WHAT MAY BE SEEN AS AN EXTENSION OF AN EXISTING TREATY COMMITMENT. ON THE OTHER HAND, IT MAY BE POSSIBLE THAT ENOUGH FLEXIBILITY CAN BE FOUND TO MEET MARCOS' QUESTION ON THIS POINT. WE DO NOT, HOWEVER, SEE ANY ROOM FOR FLEXIBILITY ON MARCOS' DESIRE TO EXTEND THE TREATY COMMITMENT TO THE DISPUTED TERRITORIES, UNLESS THE DISPUTES ARE RESOLVED IN HIS FAVOR.

16. CHUCK ROBINSON RETURNS TOMORROW NIGHT AND WE WILL THEN HAVE A CLEARER IDEA OF WHAT HE DISCOVERED IN CONVERSATION WITH MARCOS ON THESE MATTERS. WE ALSO SUGGEST A FURTHER EXCHANGE WITH SULLIVAN BEFORE MAKING A FINAL DECISION ON HOW TO REPLY TO THE AIDE MEMOIRE.

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